

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 21, 2014

**SENATE BILL**

**No. 1326**

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**Introduced by Senator Roth**

February 21, 2014

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An act to amend Sections 1793.02 and 1795.6 of the Civil Code, relating to hearing aids.

LEGISLATIVE COUNSEL'S DIGEST

SB 1326, as amended, Roth. Hearing aids: warranty: work order or receipt.

Existing law requires all new and used assistive devices sold at retail in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that the assistive device may be returned to the seller within 30 days of the date of the actual receipt by the buyer or completion of fitting by the seller, whichever occurs later.

This bill would, with respect to hearing aids, require all new and used hearing aids sold in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that if the device is not initially fit for the buyer's particular needs, it may be returned to the seller within ~~30~~ 45 days of the initial date of delivery to the buyer.

Existing law requires the warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for \$50 or more to automatically be tolled from the date upon which the buyer takes certain actions.

This bill would, with respect to hearing aids, require the warranty period to resume on the date upon which the repaired or serviced hearing

aid is delivered to the buyer or 5 days after the buyer is notified that the hearing aid is repaired or serviced and is available for the buyer's possession, whichever is earlier.

Existing law requires every manufacturer or seller of consumer goods selling for \$50 or more to provide a receipt to the buyer showing the date of purchase. Existing law requires every manufacturer or seller performing warranty repairs or service on the goods to provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced, as specified.

This bill would, with respect to hearing aids, require the seller, after receiving the hearing aid for warranty repairs or service, to provide at the time of delivery to the buyer a work order or receipt with the date the warranty period resumes and the revised expiration date of the warranty, as adjusted to reflect the suspension of the warranty period provided pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1793.02 of the Civil Code is amended  
2     to read:  
3     1793.02. (a) (1) Except as provided in paragraph (2), all new  
4     and used assistive devices sold at retail in this state shall be  
5     accompanied by the retail seller's written warranty which shall  
6     contain the following language: "This assistive device is warranted  
7     to be specifically fit for the particular needs of you, the buyer. If  
8     the device is not specifically fit for your particular needs, it may  
9     be returned to the seller within 30 days of the date of actual receipt  
10    by you or completion of fitting by the seller, whichever occurs  
11    later. If you return the device, the seller will either adjust or replace  
12    the device or promptly refund the total amount paid. This warranty  
13    does not affect the protections and remedies you have under other  
14    laws." In lieu of the words "30 days" the retail seller may specify  
15    any longer period.  
16    (2) (A) All new and used hearing aids sold in this state shall  
17    be accompanied by the retail seller's written warranty and shall  
18    contain the following language: "This hearing aid is warranted to  
19    be specifically fit for the particular needs of you, the buyer. If the

1 hearing aid is not initially fit for your particular needs, it may be  
2 returned to the seller within ~~30~~ 45 days of the initial date of  
3 delivery to you. If you return the hearing aid, the seller will either  
4 adjust or replace the hearing aid or promptly refund the total  
5 amount paid. This warranty does not affect the protections and  
6 remedies you have under other laws.”

7 (B) In lieu of the words ~~“30 “45 days”~~ the retail seller may  
8 specify any longer period.

9 (C) ~~The~~ *On the initial date of delivery, the retail seller’s seller*  
10 *shall revise the written warranty shall to* include the initial date of  
11 delivery to the buyer of the hearing aid and expiration date of the  
12 warranty.

13 (b) The language prescribed in subdivision (a) shall appear on  
14 the first page of the warranty in at least 10-point bold type. The  
15 warranty shall be delivered to the buyer at the time of the sale of  
16 the device.

17 (c) If the buyer returns the device within the period specified  
18 in the written warranty, the seller shall, without charge and within  
19 a reasonable time, adjust the device or, if appropriate, replace it  
20 with a device that is specifically fit for the particular needs of the  
21 buyer. If the seller does not adjust or replace the device so that it  
22 is specifically fit for the particular needs of the buyer, the seller  
23 shall promptly refund to the buyer the total amount paid, the  
24 transaction shall be deemed rescinded, and the seller shall promptly  
25 return to the buyer all payments and any assistive device or other  
26 consideration exchanged as part of the transaction and shall  
27 promptly cancel or cause to be canceled all contracts, instruments,  
28 and security agreements executed by the buyer in connection with  
29 the sale. When a sale is rescinded under this section, no charge,  
30 penalty, or other fee may be imposed in connection with the  
31 purchase, fitting, financing, or return of the device.

32 (d) With respect to the retail sale of an assistive device to an  
33 individual, organization, or agency known by the seller to be  
34 purchasing for the ultimate user of the device, this section and  
35 subdivision (b) of Section 1792.2 shall be construed to require that  
36 the device be specifically fit for the particular needs of the ultimate  
37 user.

38 (e) This section and subdivision (b) of Section 1792.2 shall not  
39 apply to any of the following sales of assistive devices:

1 (1) A catalog or similar sale, as defined in subdivision (q) of  
2 Section 1791, except a sale of a hearing aid.

3 (2) A sale which involves a retail sale price of less than fifteen  
4 dollars (\$15).

5 (3) A surgical implant performed by a physician and surgeon,  
6 or a restoration or dental prosthesis provided by a dentist.

7 (f) The rights and remedies of the buyer under this section and  
8 subdivision (b) of Section 1792.2 are not subject to waiver under  
9 Section 1792.3. The rights and remedies of the buyer under this  
10 section and subdivision (b) of Section 1792.2 are cumulative, and  
11 shall not be construed to affect the obligations of the retail seller  
12 or any other party or to supplant the rights or remedies of the buyer  
13 under any other section of this chapter or under any other law or  
14 instrument.

15 (g) Section 1795.5 shall not apply to a sale of used assistive  
16 devices, and for the purposes of the Song-Beverly Consumer  
17 Warranty Act the buyer of a used assistive device shall have the  
18 same rights and remedies as the buyer of a new assistive device.

19 (h) The language in subdivision (a) shall not constitute an  
20 express warranty for purposes of Sections 1793.2 and 1793.3.

21 SEC. 2. Section 1795.6 of the Civil Code is amended to read:

22 1795.6. (a) (1) Except as provided in paragraph (2) warranty  
23 period relating to an implied or express warranty accompanying  
24 a sale or consignment for sale of consumer goods selling for fifty  
25 dollars (\$50) or more shall automatically be tolled for the period  
26 from the date upon which the buyer either (1) delivers  
27 nonconforming goods to the manufacturer or seller for warranty  
28 repairs or service or (2), pursuant to subdivision (c) of Section  
29 1793.2 or Section 1793.22, notifies the manufacturer or seller of  
30 the nonconformity of the goods up to, and including, the date upon  
31 which (1) the repaired or serviced goods are delivered to the buyer,  
32 (2) the buyer is notified the goods are repaired or serviced and are  
33 available for the buyer's possession or (3) the buyer is notified  
34 that repairs or service is completed, if repairs or service is made  
35 at the buyer's residence.

36 (2) With respect to hearing aids, the warranty period shall  
37 resume on the date upon which (1) the repaired or serviced hearing  
38 aid is delivered to the buyer or (2) five days after the buyer is  
39 notified the hearing aid is repaired or serviced and is available for  
40 the buyer's possession, whichever is earlier.

1 (b) Notwithstanding the date or conditions set for the expiration  
2 of the warranty period, such warranty period shall not be deemed  
3 expired if either or both of the following situations occur: (1) after  
4 the buyer has satisfied the requirements of subdivision (a), the  
5 warranty repairs or service has not been performed due to delays  
6 caused by circumstances beyond the control of the buyer or (2)  
7 the warranty repairs or service performed upon the nonconforming  
8 goods did not remedy the nonconformity for which such repairs  
9 or service was performed and the buyer notified the manufacturer  
10 or seller of this failure within 60 days after the repairs or service  
11 was completed. When the warranty repairs or service has been  
12 performed so as to remedy the nonconformity, the warranty period  
13 shall expire in accordance with its terms, including any extension  
14 to the warranty period for warranty repairs or service.

15 (c) For purposes of this section only, “manufacturer” includes  
16 the manufacturer’s service or repair facility.

17 (d) (1) Except as provided in paragraph (2), every manufacturer  
18 or seller of consumer goods selling for fifty dollars (\$50) or more  
19 shall provide a receipt to the buyer showing the date of purchase.  
20 Every manufacturer or seller performing warranty repairs or service  
21 on the goods shall provide to the buyer a work order or receipt  
22 with the date of return and either the date the buyer was notified  
23 that the goods were repaired or serviced or, where applicable, the  
24 date the goods were shipped or delivered to the buyer.

25 (2) With respect to hearing aids, the seller, after receiving the  
26 hearing aid for warranty repairs or service, shall also provide at  
27 the time of delivery to the buyer a work order or receipt with the  
28 following: (1) the date the warranty period resumes and (2) the  
29 revised expiration date of the warranty, as adjusted to reflect the  
30 suspension of the warranty period provided under this section.